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Note verbale dated 28 February 2017 from the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Chair of the Committee

The Permanent Mission of the United Kingdom to the United Nations wishes to submit for the attention of the Security Council Committee established pursuant to resolution 1718 (2006) and the Panel of Experts on the Democratic People's Republic of Korea the attached 90-day report on the implementation of Security Council resolution 2321 (2016) (see annex).

This submission is in accordance with paragraph 36 of Security Council resolution 2321 (2016).

The United Kingdom takes its responsibilities under Security Council resolutions on the Democratic People's Republic of Korea most seriously and we monitor closely any activity to ensure complete compliance with United Nations sanctions.

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Annex to the note verbale dated 28 February 2017 from the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Chair of the Committee

Report of the United Kingdom of Great Britain and Northern Ireland on the implementation of Security Council resolution 2321 (2016)

Introduction

1. The Permanent Mission of the United Kingdom to the United Nations has the honour to submit its report pursuant to paragraph 36 of resolution 2321 (2016) on the steps taken by the Government of the United Kingdom to implement the measures of the resolution.

Legal background

2. Security Council resolutions are implemented into the domestic law of member States of the European Union through decisions and regulations of the Council of the European Union, which have direct legal effect in each member State. The Council of the European Union has also implemented autonomous restrictive measures, including designations of individuals who have not been listed at the United Nations level and wider economic measures. These measures have effect only within the territories of member States of the European Union.

3. The Security Council, in its resolution 2321 (2016), imposed new measures and widened the scope of a number of existing measures. On 27 February 2017, the Council of the European Union adopted its decision 2017/345, which amended decision (CFSP) 2016/849 concerning restrictive measures against the Democratic People's Republic of Korea, giving effect to Security Council resolution 2321 (2016).

4. For the elements of the above decisions which fall within the competence of the European Union under the Treaty on the Functioning of the European Union, the measures were implemented by the Council of the European Union in its regulation (EC) No. 329/2007 of 27 March 2007. This regulation has been amended, most recently by regulation (EU) 2016/2215 of 8 December 2016 and regulation (EU) 2017/330 of 27 February 2017. European Union restrictive measures implement Security Council resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) and 2321 (2016). The European Union has also implemented additional European Union autonomous measures.

5. The United Kingdom drafts its own legislation to implement sanctions measures in respect of domestic criminal offences in the United Kingdom and for its overseas territories. It also drafts its own domestic legislation to control arms exports.

6. Criminal offences that relate to breaching of the financial sanctions are implemented by legislation in the form of the following financial sanctions regulations, which are drafted by Her Majesty's Treasury: the North Korea (United Nations Sanctions) Order 2009 No. 1749 and the Democratic People's Republic of Korea (European Union Financial Sanctions) Regulations 2013 No. 1877.

7. The Department for International Trade is responsible for implementing the existing comprehensive national and European Union controls on the export of and trade in arms and other goods controlled for strategic reasons. These controls are

contained in various national and European Union legal instruments, notably the Export Control Order 2008 No. 3231 (as amended) and Council regulation (EC) No. 428/2009.

8. The United Kingdom has responsibility for the implementation of Security Council resolutions in those overseas territories which fall outside the jurisdiction of the European Union. The Foreign and Commonwealth Office is in the process of implementing Security Council resolution 2321 (2016). It has previously implemented other resolutions in the form of the following overseas territories legislation: the Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012 No. 3066, the Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) Order 2013 No. 1718, the Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) (No. 2) Order 2013 No. 2599, the Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) Order 2016 No. 630 and the Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) (No. 2) Order 2016 No. 769. This legislation applies to all overseas territories with the exception of Bermuda, which drafts its own legislation, and Gibraltar, where European Union regulations apply.

9. The following report details the implementation of Security Council resolution 2321 (2016) in domestic United Kingdom and European Union legislation. These measures are also being implemented in the overseas territories.

Embargoed goods, items and technical assistance

10. European Union Council regulation (EC) No. 428/2009 of 5 May 2009 gives member States powers to prevent the export or transit of any items that might be used in connection with a weapons of mass destruction programme to any destination, or for a military end use to a destination subject to an arms embargo imposed by a binding Security Council resolution or decision or Common Position of the Council of the European Union, or a decision of the Organization for Security and Cooperation in Europe. In addition, it gives member States powers to prevent the brokering of any items that might be used in connection with a weapons of mass destruction programme to any destination, or of any dual-use item listed in annex I (to the regulation) for a military end use to a destination subject to an arms embargo as described above. This regulation is binding in its entirety and directly applicable in all member States. Supplementary measures and provisions for enforcement of these controls are set out in the Export Control Order 2008.

11. The Export Control Order 2008 prohibits the export of arms and other military equipment and technology from the United Kingdom to any destination unless the export has been authorized in writing by a licence granted by the Secretary of State for International Trade. In addition, the Democratic People's Republic of Korea is an "embargoed destination" for the purposes of the United Kingdom controls on the brokering of military goods. As a result, it is prohibited for any United Kingdom person to supply or deliver, agree to supply or deliver or do any act calculated to promote the supply or delivery of military goods from a third country to the Democratic People's Republic of Korea, regardless of where in the world the act takes place, unless authorized in writing by a licence granted by the Secretary of State.

12. All applications for licences to export or broker controlled goods, or to provide related services, are assessed on a case-by-case basis against the Consolidated European Union and National Arms Export Licensing Criteria dated 25 March 2014. A licence will not be issued if to do so would be inconsistent with our obligations under the Criteria. In particular, criterion 1 deals with the

international obligations and commitments of the United Kingdom including in the field of arms control and non-proliferation and criterion 7 deals with the risk of diversion including to weapons of mass destruction programmes of concern.

13. Prohibitions on: (a) the sale, supply, transfer or export of goods, materials, equipment and technology which could contribute to the nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes of the Democratic People's Republic of Korea; (b) the purchase, import or transport of such items from the Democratic People's Republic of Korea; (c) the provision of technical assistance, financing and financial assistance related to arms, etc., and to goods etc. which could contribute to weapons of mass destruction-related programmes of the Democratic People's Republic of Korea; and (d) the procurement of such services from the Democratic People's Republic of Korea, are set out in regulation (EC) No. 329/2007, as amended, of the Council of the European Union. These prohibitions apply directly to all activities carried out in the European Union and to the nationals of member States anywhere in the world.

14. Prohibitions applying to the sale, supply, transfer or export of luxury goods to the Democratic People's Republic of Korea are set out in article 4 of regulation (EC) No. 329/2007 of the Council of the European Union. The luxury goods to which the prohibitions apply are listed in annex III to that regulation. A breach of these prohibitions is a criminal offence under the Customs and Excise Management Act 1979 or the Export Control (North Korea Sanctions and Iran, Ivory Coast and Syria Amendment) Order 2017 No. 83. In either case, the offences carry a maximum penalty of 10 years' imprisonment and an unlimited fine.

15. Export and import of controlled goods without an appropriate licence is a criminal offence under the Customs and Excise Management Act 1979; the brokering of military goods without an appropriate licence is a criminal offence under the Export Control Order 2008. Both offences carry a maximum penalty of 10 years' imprisonment and an unlimited fine. A breach of any of the other prohibitions referred to above is a criminal offence under the Export Control (North Korea Sanctions and Iran, Ivory Coast and Syria Amendment) Order 2017 No. 83.

16. The Department for International Trade makes available to exporters, traders and intermediaries comprehensive information on sanctions and export controls through its website pages, notices to exporters and programme of seminars and training courses, and works closely with trade promotion bodies and relevant trade associations. The Department also offers a number of advisory services for businesses and individuals who wish to determine whether their activities are subject to any prohibitions or restrictions.

17. Her Majesty's Revenue and Customs is the department responsible for enforcing the controls and investigating potential or actual breaches. The Crown Prosecution Service is responsible for prosecuting breaches of the controls.

Customs

18. With regard to paragraphs 13, 20 and 21 of Security Council resolution 2321 (2016), Her Majesty's Revenue and Customs continues to enforce the relevant prohibitions on the export of arms, related materials and other goods prohibited under European Union Council regulation (EC) No. 329/2007 (as amended) to the Democratic People's Republic of Korea, as specified in Security Council resolution 2270 (2016), as well as enforcing the strategic export licensing system of the United Kingdom. Her Majesty's Revenue and Customs has measures in place to identify and interdict cargo transiting through the United Kingdom to/from the Democratic People's Republic of Korea.

19. The export and import of controlled goods without an appropriate licence is a criminal offence under the Customs and Excise Management Act 1979, and the brokering of military goods without an appropriate licence is a criminal offence under the Export Control Order 2008. These offences carry a maximum penalty of 10 years' imprisonment and an unlimited fine. A breach of other prohibitions referred to in this report is a criminal offence under the Export Control (North Korea Sanctions and Iran, Ivory Coast Sanctions and Syria Amendment) Order 2017. In the UK, Her Majesty's Revenue and Customs is the department responsible for enforcing these controls and investigating potential or actual breaches. The Crown Prosecution Service is responsible for prosecuting breaches of the controls.

20. Her Majesty's Revenue and Customs is alert to the risk of prohibited goods being exported to known diversionary destinations and maintains controls that can intercept goods that are likely to be illegally diverted to the Democratic People's Republic of Korea. Her Majesty's Revenue and Customs enforces the prohibition on trafficking and brokering controls in relation to military goods both originating in and destined for the Democratic People's Republic of Korea where the trade activity is undertaken within the United Kingdom or by a United Kingdom national anywhere in the world.

Financial and asset freezes

21. With regard to paragraphs 3, 16 and 31-33 of Security Council resolution 2321 (2016), Her Majesty's Treasury issues notices to the United Kingdom financial sector whenever entities are listed under the Democratic People's Republic of Korea regime, stating that all of those entities' assets must be frozen and reported to the Treasury. Her Majesty's Treasury has also introduced criminal penalties for breaching the asset freeze, as reflected in the Democratic People's Republic of Korea (European Union Financial Sanctions) Regulations 2013 No. 1877, as amended.

22. Criminal penalties are in place to deter credit or financial institutions based in the United Kingdom from maintaining accounts, branches or subsidiaries in the Democratic People's Republic of Korea where Her Majesty's Treasury has made a direction that there are reasonable grounds to believe that they could contribute to the nuclear, weapons of mass destruction or ballistic missile programmes of the Democratic People's Republic of Korea.

23. The UK has recently introduced new powers onto the statute book via the Policing and Crime Act 2017 which will strengthen sanctions enforcement in the UK, including through new civil monetary penalties and an increase to maximum sentences for those that breach sanctions. This will include breaches of Security Council resolution 2321 (2016). The new powers also include "without delay" provisions which will ensure that new United Nations listings, including any annexed to future DPRK-related resolutions, will come into force in the UK within 48 hours as per the Financial Action Task Force (FATF) guidelines. These new powers will come into force in April 2017.

24. Following each plenary meeting of the FATF at which the Democratic People's Republic of Korea remains on the Task Force's list of jurisdictions with strategic deficiencies in their anti-money-laundering and counter-terrorist financing regimes, Her Majesty's Treasury publishes a notice advising regulated entities to consider the Democratic People's Republic of Korea as high-risk for the purposes of the Money Laundering Regulations 2007 No. 2157. It advises firms to apply enhanced due diligence measures in accordance with the risks presented. This includes applying enhanced customer due diligence and enhanced ongoing monitoring on a risk-sensitive basis. The most recent notice was published in October 2016. Suspicions

of money-laundering, terrorist financing or proliferation financing must be reported to the United Kingdom Financial Intelligence Unit at the National Crime Agency.

Travel restrictions

25. With regard to paragraphs 15, 25 and 33 of Security Council resolution 2321 (2016), the United Kingdom implements the travel restriction elements of United Nations Security Council resolutions as follows:

- The provisions in section 8B of the Immigration Act 1971 (as amended) enable non-European Economic Area (non-EEA) nationals named in the relevant annex to the United Nations Security Council resolution to be refused entry to the United Kingdom. Section 8B also provides for the cancellation of any leave already held by the person and for the cessation of any exemption an individual may have had from immigration control.
- Where the resolution calls for a non-EEA national described but not named in the resolution to be expelled from or refused entry to a member State, the person may be deported or refused entry on conducive grounds. Deportation would be under section 3 (5) (a) of the Immigration Act 1971; refusal of entry would be in accordance with paragraph 320 (19) of the United Kingdom's Immigration Rules.
- In the event of an EEA national coming within the scope of the United Nations resolution, refusal of admission to or deportation from the United Kingdom would be on grounds of public policy or public security in accordance with the Immigration (European Economic Area) Regulations 2016.

26. All individuals subject to a travel ban who are listed by the United Nations or the European Union are included on United Kingdom watch lists and will normally be refused entry to or transit through the United Kingdom. Additionally the Authority to Carry Scheme 2015 provides that a carrier may be refused authority to carry to the United Kingdom individuals who are listed by the United Nations or European Union as being subject to travel restrictions (to the extent the individual is seeking to travel in breach of those restrictions).

Specialized teaching or training

27. With regard to paragraphs 10 and 11 of Security Council resolution 2321 (2016), if a person is specifically applying to enter the United Kingdom for the purpose of studying an area that is of proliferation concern, the visa application should fall for refusal under part 6A of the United Kingdom's Immigration Rules if that individual does not hold a valid Academic Technology Approval Scheme clearance certificate where required to do so. Her Majesty's Government has the authority to instruct a university to exclude an international student from an Academic Technology Approval Scheme applicable course if he or she has failed to gain clearance under the Scheme first.

28. The Academic Technology Approval Scheme is an initiative of the British Government led by the Foreign and Commonwealth Office, which prevents the intangible transfer of technology and potential postgraduate international students from gaining access to courses and modules provided by United Kingdom higher education institutions which may provide them with skills or expertise in the proliferation and delivery of weapons of mass destruction, including ballistic missiles.

29. An Academic Technology Approval Scheme clearance certificate will be required where a non-European Economic Area or Swiss national is applying for leave to undertake one of the following:

(a) Postgraduate studies leading to a doctorate or master's degree by research in one of the subjects listed in paragraph 1 of appendix 6 of the Immigration Rules;

(b) Postgraduate studies leading to a taught master's degree or other postgraduate qualification in one of the subjects listed in paragraph 2 of appendix 6 of the Immigration Rules;

(c) A period of study or research in excess of six months in one of the subjects listed in paragraphs 1 or 2 of appendix 6 of the Immigration Rules at an institution of higher education where this forms part of an overseas postgraduate qualification.

30. Those in the United Kingdom with leave as a student must apply for a new Academic Technology Approval Scheme certificate if they change their course to one which needs such a certificate, or if the content of their current course changes, or if they apply to move to another institution or need to extend their leave on their current course.

31. If a migrant applies for leave to enter or remain in the United Kingdom in a non-study category, the leave granted may be subject to a restriction prohibiting any study in the above areas of concern unless he or she first obtains an Academic Technology Approval Scheme clearance certificate.

Transportation

32. With regard to the measures concerning maritime restrictions referred to in paragraphs 8, 9, 12, 22, 23 and 24 of Security Council resolution 2321 (2016), the United Kingdom assesses that these measures are likely to have very little, if any, impact on United Kingdom vessels (including the leasing and chartering of such vessels), maritime services or workers. No supplementary controls or provisions are considered necessary for enforcement, which will be undertaken by the Maritime and Coastguard Agency.

33. With regard to paragraph 8 of Security Council resolution 2321 (2016), there are no scheduled air services between the United Kingdom and the Democratic People's Republic of Korea. The United Kingdom is unaware of any instances where aircraft believed to be transporting embargoed goods have sought permission to take off from, land in or overfly the United Kingdom.

34. Any non-European Union aircraft operating commercially to or from the United Kingdom requires explicit permission to do so from the Secretary of State for Transport, who can revoke, suspend or vary permissions as necessary. Similarly, if a European Union registered aircraft was operating to or from the United Kingdom, and subsequently travelling to a point outside the European Union, it would also require such permission. This requirement for such permission from the Secretary of State for Transport would act as a means to ensure that our obligation to implement Security Council resolution 2321 (2016) is successfully honoured.

Diplomatic issues

35. With regard to measures within Security Council resolution 2321 (2016) related to diplomatic issues, as a permanent member of the Security Council, the United Kingdom has a direct interest in promoting international security and the security of the Korean Peninsula. The United Kingdom therefore wants the Democratic People's Republic of Korea to adhere to its international obligations as a United Nations Member State, engage with the international community and take constructive steps towards denuclearization.

36. The United Kingdom engages with officials of the Democratic People's Republic of Korea, including diplomats, to ensure that our views on such issues, and those of our international partners, are clearly understood. The United Kingdom is taking every opportunity to urge the Government of the Democratic People's Republic of Korea, including diplomatic personnel, to refrain from further provocative action and to re-engage with the international community, particularly regarding its nuclear, ballistic missile and other weapons of mass destruction programmes.

37. The United Kingdom complies fully with its obligations under the Vienna Convention on Diplomatic Relations. In return, the United Kingdom expects all persons enjoying diplomatic privileges and immunities to abide by article 41 of the Convention, which states that all persons enjoying privileges and immunities have a duty to respect the laws and regulations of the receiving State and all missions in the United Kingdom have access to our guide to protocol matters. The United Kingdom takes firm action against any abuse of privileges or immunities by diplomatic missions.